

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

vs.

Herbert Ben Sr.: DOB 1950

Rosabelle Ben: DOB 1955

Herbert Ben Jr.: DOB 1969

Bruce Hamilton: DOB 1936

(Name and Address of Defendant)

CRIMINAL COMPLAINT

Case Number:

12-MJ-1045

I, the undersigned complainant state that the following is true and correct to the best of my

knowledge and belief. On or about October or November 2010;
March or April 2011; December in San Juan County, in
3 & 9, 2011

(Date)

the State of New Mexico and District of New Mexico defendant(s) did,

(Track Statutory Language of Offense)

commit abusive sexual contact and aggravated sexual abuse of a child.

in violation of Title 18 United States Code, Section(s) 2, 2241(c), 2244, and 2246(2)(A)(B)(3)I further state that I am a(n) Special Agent - FBI and that this complaint is based on the 18 USC 1153
18 USC 1152 (HAMILTON)
18 2246(3) (REV JIC)
KBM

following facts:

See Attached Affidavit hereby incorporated by reference as if fully restated herein.

Continued on the attached sheet and made a part of this complaint:

X Yes ☐ No

Signature of Complainant

Printed Name of Complainant

Sworn to before me and signed in my presence,

Date

April 30, 2012

at

City and State

Albuquerque NM

KAREN B. MOLZEN
U.S. MAGISTRATE JUDGE

Name and Title of Judge

Signature of Judge

Karen Bmolzen

MAY 01 2012
MATTHEW J. DYKMAN
CLERK

1 GCM/SAUSA

2 NEW MEXICO

3 ALBUQUERQUE, NEW MEXICO

4 United States of America)

5 vs)

6 Herbert Ben Sr.

7 DATE OF BIRTH: 1950)

8 Social Security Number XXX-XX-0542)

9 Herbert Ben Jr.

10 DATE OF BIRTH: 1969)

11 Social Security Number XXX-XX-8479)

12 Rosabelle Ben

13 DATE OF BIRTH: 1955)

14 Social Security Number XXX-XX-8018)

15 Bruce Hamilton

16 DATE OF BIRTH: 1936)

17 Social Security Number XXX-XX-8291)

18 AFFIDAVIT

19 1) I am a regularly appointed Special Agent (SA) of
20 the Federal Bureau of Investigation (FBI). The following
21 facts were determined during the course of an investigation
22 conducted by agents of the FBI and Navajo Police Department
23 Criminal Investigators and communicated to me. The facts that
24 were determined as part of this investigation are as follows:

25 2) On 04/12/2012 SA Grant was notified of a reported
26 Child Sexual Abuse case from Bruce Russell. Bruce Russell
27 described that his daughter, JD1, was being sexually abused
28 by his ex-wife's family members. His ex-wife is Zena Russell.
The victim was identified as a juvenile, 14 year old, Native
American female. The victim advised that she had been
sexually abused by the following individuals: step

1 grandfather, Herbert Ben Sr., step grandmother Rosabelle Ben,
2 step uncle Darrick Jones, step uncle Herbert Ben Jr., and a
3 friend of the family, Bruce Hamilton. All of the incidents,
4 except for one, happened in the Shiprock, New Mexico, area on
5 the Navajo Indian Reservation. The Victim, Witnesses, and
6 Subjects involved in this investigation will be hereinafter
7 referred to as follows:

8 A. Victim

- 9 1. Jane Doe 1, age 14 ("JD1" - Year of
10 Birth: 1998)

11 B. Witnesses

- 12 1. John Doe 2, age 12 ("JD2" - Year of Birth:
13 2000)

- 14 2. Bruce Russell, age 34 ("Bruce Russell" -
15 Year of Birth: 1978)

- 16 3. Delphine George, age 33 ("Delphine" - Year
17 of Birth: 1978)

- 18 4. Wendy Harrison, ("Wendy")

19 C. Subjects

- 20 1. Herbert Ben Sr., age 61 ("Herbert Sr." -
21 Year of Birth: 1950)

- 22 2. Herbert Ben Jr., age 42 ("Herbert Jr." -
23 Year of Birth: 1969)

- 24 3. Rosabelle Ben, age 57 ("Rosabelle" -
25 Year of Birth: 1955)

- 26 4. Bruce Hamilton, age 75 ("Bruce Hamilton" -
27 Year of Birth: 1936)

1 5. Darrick Jones, age 22 ("Darrick" - Year of
2 Birth: 1990)

3
4 3) JD1 is in the 8th grade and has been living with
5 her biological mother, Wendy, since January 2012. She has
6 multiple half brothers and half sisters to include her 12
7 year old brother, JD2, two year old twin sisters, and her six
8 month old sister. JD1's biological father is Bruce Russell.
9 Bruce Russell got married to another woman named "Zena". Zena
10 has family that lives in the Shiprock area that JD1 has spent
11 every weekend with for a few years. These family members are
12 Zena's father, "Herbert Sr.", Zena's mother, "Rosabelle",
13 Zena's brother, "Darrick" and Zena's other brother "Herbert
14 Jr." JD1 estimated that Herbert Sr. is 60 years old and
15 Darrick is 21 years old. Herbert Sr., Darrick, and Rosabelle
16 live in a pink trailer south of Shiprock, New Mexico, on the
17 road towards Red Valley on the Navajo Indian Reservation. JD2
18 would also go with her to spend the weekends at this
19 residence. For a long time, JD1 was living in Dulce, New
20 Mexico, during the week and would travel to Shiprock for the
21 weekend.

22 4) On 03/19/2012, JD1 had a conversation with her
23 father's current girlfriend, Delphine. JD1 told Delphine that
24 she had been sexually molested and touched by Darrick,
25 Herbert Sr., and Rosabelle when she stays there on the
26 weekends. There was also an incident of sexual abuse at a
27 hotel the occurred while she was on a trip to Phoenix,
28 Arizona, for an art show with Rosabelle, Darrick, and Herbert
Sr. on December 9, 2011, through December 11, 2011. JD1
traveled from Shiprock, New Mexico, to Phoenix, Arizona with
Herbert Sr., Rosabelle, and Darrick. It was this incident
that was the last of any sexual abuse that occurred involving
Darrick, Herbert Sr, and Rosabelle.

5) JD1 couldn't remember the name of the hotel that

1 she was staying at in Phoenix, but remembered that the hotel
2 was within close driving distance to Washington Street where
3 the art show was held. She does remember what the inside of
4 the hotel looks like. On Saturday evening, December 10, 2011,
5 before Herbert Sr. and Rosabelle left to go to the casino,
6 Herbert Sr. got a condom for JD1 and told her to use it with
7 Darrick that night while they were gone. Herbert Sr. put the
8 condom in one of the drawers next to the bed. Herbert Sr. and
9 Rosabelle left the hotel to go to the casino. This left
10 Darrick and JD1 alone in the hotel room. JD1 was tired and
11 fell asleep on the bed. JD1 woke up with Darrick on top of
12 her and her pants were off with her underwear around her
13 ankles. JD1 felt a "pinch" that hurt her "private part". JD1
14 pointed to her groin/vaginal area of her body and explained
15 that the part of her body she pees from is what she calls her
16 "private part". JD1 tried to get Darrick off of her and told
17 him to "get off". Darrick said "I'm not finished yet". JD1
18 was able to get Darrick off and ran into the bathroom and
19 locked the door. She was crying in the bathroom and stayed in
20 there for a long time.

21 6) JD1 waited awhile before she came out of the
22 bathroom and saw Darrick was asleep on the bed. At
23 approximately 1:00 am that same night, Herbert Sr. and
24 Rosabelle had come back to the hotel room. Rosabelle went
25 into the bathroom and Herbert Sr. started "touching" JD1 on
26 the bed. JD1 described that Herbert Sr. was using his hands
27 to rub her chest and "private part" on top of her clothes.
28 JD1 began fighting with him to stop touching her and then he
pushed her on to the floor. She began to cry and fell asleep
on the floor that night.

29 7) All the other incidents of sexual abuse occurred
30 on the Navajo Reservation while JD1 was spending time in
31 Shiprock, New Mexico. The last incidents of sexual abuse
32 occurred on the Navajo Reservation in the Shiprock area on
33 Saturday, December 3, 2011 and Friday, December 9, 2011.

1
2 8) JD1 explained that Rosabelle would force her on
3 many occasions to ride in a vehicle with Herbert Sr. On
4 December 3, 2011, Herbert Sr. drove JD1 to an area
5 approximately one mile west of the new apartments in
6 Shiprock. Herbert Sr. drove a blue/turquoise colored, four
7 door, car and stopped at a location on this dirt road.
8 Herbert Sr. told JD1 to get in the back seat of the car. Once
9 she was in the back seat, Herbert got in the back seat with
10 her, took off her pants and underwear, and started "licking"
11 her "private part". JD1 tried pushing his head away and
12 Herbert Sr. told her to "leave me alone". Herbert Sr. also
13 used his hands to rub her chest area under her clothes. This
14 same dirt road west of the apartments, is a location that
15 Herbert Sr. has driven her to many times and sexually
16 assaulted her on the weekend. JD1 estimated that these
17 incidents where Herbert Sr. would drive her to this location
18 in his vehicle and "lick" her "private part" happened 15 to
19 20 times.

20 9) On the same December 3, 2011, weekend, Herbert
21 Sr., touched and licked JD1 at Herbert Sr.'s residence south
22 of Shiprock in the pink trailer. This happened every weekend
23 she stayed in Shiprock. Rosabelle told JD1 to let Herbert Sr.
24 "lick" her, so she could get "miniatures" from Herbert Sr.
25 JD1 stated that Rosabelle would call small beer beverages
26 "miniatures". Rosabelle told JD1 to go into Herbert Sr.'s
27 bedroom. At the house was JD2 and her younger twin sisters.
28 Once JD1 was in Herbert Sr.'s bedroom, he locked the door.
Herbert Sr. told JD1 to get on the bed, where he would then
take off her pants and underwear. Herbert Sr. would then
start "licking" her "private part" like he did in the
vehicle. Herbert Sr.'s hands would also go under her shirt so
he could touch her chest area. On many occasions, Herbert Sr.
made JD1 kiss him on his mouth and stick her tongue in his
mouth. Herbert Sr. told JD1 that he loved her and wanted to
be with her. Almost all of these incidents would happen on
Saturday during her weekend stays.

1 10) In addition to the "licking", "kissing" and
2 "touching" that occurred in Herbert Sr.'s bedroom, Herbert
3 Sr. and Rosabelle made JD1 touch Herbert Sr.'s "private part"
4 with her hands. JD1 described Herbert Sr.'s "private part" as
5 the part of body that boys pee with. JD1 told Herbert Sr.
6 that she didn't want to touch his private part. Herbert Sr.
7 offered to pay her \$10 to touch his private part. When she
8 continued to refuse, Rosabelle came into the bedroom and told
9 JD1 that she better touch Herbert Sr.'s private part so she
10 can get her "miniatures" from Herbert Sr. Rosabelle then took
11 JD1's hands and physically forced JD1 to touch Herbert Sr.'s
12 private part, as a demonstration of how to do it. Rosabelle
13 physically forced JD1 at least 6 times on separate occasions
14 to touch Herbert Sr.'s private part. Whenever JD1 was in the
15 locked bedroom with Herbert Sr, she fought with him until he
16 would stop touching or licking her. This made Herbert Sr. mad
17 and he would attempt to make JD1 feel bad by telling her he
18 would never touch her again. All of these bedroom incidents
19 occurred on Saturday during the weekend and happened every
20 weekend, with this last incident involving Rosabelle and
21 Herbert Sr. in the bedroom occurring on Saturday, December 3,
22 2011.

18 11) On many occasions at night during the weekend
19 while JD1 was sleeping on the living room floor, Darrick
20 tried to do what he did in Phoenix. While asleep on the floor
21 at Herbert Sr.'s house Darrick would come in at night and
22 start taking JD1's pants off. JD1 fought with Darrick until
23 he gave up trying to touch her. JD1 doesn't believe that any
24 of his "private part" actually touched her because she was
25 fighting with him.

25 12) JD1 would spend time on the weekend at Herbert
26 Jr.'s residence, who is the son of Herbert Sr. Herbert Jr.
27 lives in Candelight Housing #67 in Shiprock, New Mexico. On
28 at least six separate occasions, Herbert Jr. was able to
coerce JD1 to go into the bathroom at his residence and take
pictures of herself naked using his cell phone camera.

1 Herbert Jr. would constantly harass JD1 to take pictures of
2 herself naked. JD1 would use the cell phone camera to take
3 pictures of her face and breasts naked. The phone she used
4 was a black colored "flip phone", which she gave to Herbert
5 Jr. when she was done. The last time Herbert Jr. had her take
6 pictures of herself naked was in September 2011.

7 13) Herbert Jr. also sexually assaulted JD1 on two
8 separate incidents. The first incident occurred at Herbert
9 Jr.'s residence between October and November 2010. This
10 incident happened while she was in the 6th grade or
11 approximately 12 years old. It was in the morning and JD1 was
12 trying to get ready for school in the bedroom. Herbert Jr.
13 came into the room with her and locked the door behind him.
14 JD1 tried to get away from Herbert Jr. by jumping across the
15 bed. JD1 was able to unlock the door, but she couldn't get
16 the door open. Herbert Jr. took her pants off and got on top
17 of her on the bed. JD1 told him to stop. Just about the time
18 that Herbert Jr. was going to put his "private part" in her
19 "private part" her brother JD2 walked into the bedroom.
20 Herbert Jr. then got off of JD1 and asked JD2 if he wanted a
21 soda. JD1 believes this was an effort to keep JD2 from
22 telling anyone.

23 14) The second incident with Herbert Jr. happened
24 on Friday, December 9, 2011, when JD1 was getting ready to
25 leave for the Phoenix. JD1 was at the "pink house" in
26 Shiprock and Herbert Jr. came over to the house. When the
27 people in the house were in another room, Herbert Jr. came up
28 to JD1 like he was going to give her a hug, but instead
29 grabbed JD1's chest/breast area. This was done on the outside
30 of her clothing.

31 15) Another guy involved in sexually assaulting JD1
32 was "Bruce Hamilton". Bruce Hamilton was an older guy and a
33 friend of Rosabelle. When JD1 was in the 7th grade,
34 approximately, March or April 2011, Rosabelle drove JD1 to a
35 building next to the Laundromat in Shiprock, New Mexico, and

1 met Bruce Hamilton. Bruce Hamilton had a key to the building
2 although it didn't appear to be used for anything other than
3 storage. When JD1 walked into the building there was a pink
4 flower designed blanket on the floor. JD1 described that
5 there were old car parts inside and the blanket that she was
6 forced to lay down on was laid next to the counter. There was
7 also a stove inside this building which hasn't been used in a
8 long time. Bruce Hamilton would give Rosabelle an alcoholic
9 beverage when they got there. Rosabelle told JD1 to take her
10 clothes off for Bruce Hamilton. Bruce Hamilton took his
11 clothes off and Rosabelle would touch Bruce Hamilton's
12 private part in front of JD1. Rosabelle instructed JD1 to
13 touch Bruce Hamilton's private part and demonstrated by
14 grabbing JD1's hands and forcing JD1's hands onto Bruce
15 Hamilton's private part. JD1 was told by Rosabelle to lay on
16 the blanket. Bruce Hamilton would stand over JD1 and "white
17 stuff" would come out of Bruce Hamilton's "private part" onto
18 JD1's stomach. Bruce Hamilton then licked the "white stuff"
19 off of JD1's stomach and would "lick" JD1's private part.
20 Rosabelle watched Bruce Hamilton do this to JD1 while she
21 drank her alcohol and smoked. After Bruce Hamilton was done,
22 JD1 got a tissue and wiped off the "white stuff".

18 16) Bruce Hamilton gave JD1 and Rosabelle \$20 after
19 he was done. The last time Rosabelle took her to see Bruce
20 Hamilton at this building was March or April 2011, while she
21 was in the 7th grade. JD1 estimated that Rosabelle drove her
22 to this building and Bruce Hamilton sexually assaulted her
23 approximately 20 times. All of the incidents were very
24 similar to this last one occurring in 2011 and always
25 happened on Saturday when JD1 was staying the weekend in
26 Shiprock.

26 17) JD1 was shown photo's of Herbert Sr.,
27 Rosabelle, Darrick, Herbert Jr, and Bruce Hamilton. JD1
28 stated that these photos were in fact the same Herbert Ben
Sr., Rosabelle Ben, Darrick Jones, Bruce Hamilton, and
Herbert Ben Jr., who were responsible for sexually assaulting

1 her.

2
3 18) Approximately 2 years ago, JD1 told JD2 that
4 Herbert Sr. was touching her, but JD2 didn't believe her.
5 After JD2 saw the incident with Herbert Jr., he then believed
6 what JD1 told him. JD1 was afraid to tell anyone else for
7 fear of getting in trouble. She thought she may have been
8 doing something wrong. During the weekend stays in Shiprock,
9 Bruce Russell and Zena Russell were never at the house when
10 Herbert Sr. and Rosabelle did things to her.

11
12 19) JD2 was interviewed to see if he had any
13 knowledge of sexual abuse involving his sister, JD1. JD1 told
14 JD2 a while ago that Zena's Dad, Herbert Sr., was touching
15 her. Originally JD2 didn't believe what JD1 had told him
16 until he witnessed an incident involving, Herbert Jr., also
17 known as "Goo Goo".

18
19 20) This incident happened approximately 2 years
20 ago when JD2 was in the 4th grade and he was at Zena's house
21 in Shiprock. JD2 was getting ready for school in the morning
22 and was looking for his sister JD1. JD2 opened the door to
23 the 3rd bedroom and saw "Goo Goo" pulling down JD1's pants on
24 the bed. JD1 was kicking "Goo Goo" and then "Goo Goo" got off
25 the bed. After see this incident, JD2 believed what JD1 had
26 told him about, Herbert Sr. touching her.

27
28 21) JD2 also stated that every weekend JD1 and he
29 would go to Shiprock and stay at Zena's orange ranch house in
30 Shiprock. JD2 also has twin sisters that he helps watch while
31 he's at the ranch house. JD2 remembered on a few of these
32 weekends, Zena's Mom and Dad would go into a bedroom with JD1
33 and lock the door. Zena's Mom and Dad told JD2 to watch the
34 twin girls because they had to talk with JD1. JD2 knew the
35 door was locked because he tried opening it. JD2 wasn't sure
36 what happened behind the closed door.

37
38 22) In addition to JD2, JD1 also had disclosed the

1 sexual abuse incidents to Bruce Russell, Delphine, and Wendy.
2 She told them all around the same time in March 2012.

3 23) A check of Navajo Nation enrollment records
4 show JD1, Herbert Sr., and Darrick, are enrolled members of
5 the Navajo Indian Tribe. A check of Jicarilla Apache Nation
6 enrollment records show Herbert Jr., and Rosabelle, are
7 enrolled members of the Jicarilla Indian Tribe. Bruce
8 Hamilton is Non-Indian.

9 24) The double wide trailer, also known as the
10 "ranch" residence where JD1 would stay on the weekends,
11 located approximately 1 Mile West of Highway 491 on the Red
12 Valley turnoff road, Shiprock, New Mexico is located on the
13 Navajo Indian Reservation.

14 25) The residence described as Candle Light House
15 #67, Shiprock, New Mexico, where Herbert Jr. lives, is
16 located on the Navajo Indian Reservation.

17 26) The building described as G.P.S. Coordinates
18 (N 36°47.075', W 108°40.687') next to the Laundromat on
19 Highway 64, in Shiprock, New Mexico, is located on the Navajo
20 Indian Reservation.

21 27) The dirt road location where JD1 was sexually
22 assaulted in Herbert Sr.'s vehicle, described as G.P.S.
23 Coordinates (N 36°48.628', W 108°40.405') approximately 1
24 Mile West of Highway 491, across the highway of the new
25 apartments, Shiprock, New Mexico, is located on the Navajo
26 Indian Reservation.

27 28) Based on the above, your affiant submits that
28 probable cause exists to believe Herbert Ben Sr., an Indian
person, committed the following offenses: Aggravated sexual
abuse, that is he sexually assaulted JD1 multiple times on
December 3, 2011, by contact between the mouth and the penis,
the mouth and the vulva, or the mouth and the anus; and the

1 intentional touching, either directly or through the
2 clothing, of the genitalia, anus, groin, breast, inner thigh,
3 or buttocks of any person with an intent to abuse, humiliate,
4 harass, degrade, or arouse or gratify the sexual desire of
5 any person in violation of Title 18, United States Code 2241
6 (c); and in violation of Title 18, United States Code 2244
7 (a); and in violation of Title 18, United States Code 2246
8 (2) (B) (3); and that the offenses occurred in Indian Country,
9 to wit the Navajo Indian Reservation, in violation of Title
10 18, United States Code 1153.

11 29) Based on the above, your affiant submits that
12 probable cause exists to believe Herbert Ben Jr., an Indian
13 person, committed the following offenses against JD1:
14 Aggravated sexual abuse, that is he engaged in a sexual act
15 by using force against that other person, who has attained
16 the age of 12 years but has not attained the age of 16 years
17 (and is at least 4 years younger than the person so engaging)
18 or attempts to do so, by contact between the penis and the
19 vulva or the penis and the anus, and contact involving the
20 penis occurs upon penetration, however, slight; in violation
21 of Title 18, United States Code 2241 (c); and in violation of
22 Title 18, United States Code 2246 (2) (A); and the
23 intentional touching, either directly or through the
24 clothing, of the genitalia, anus, groin, breast, inner thigh,
25 or buttocks of any person with an intent to abuse, humiliate,
26 harass, degrade, or arouse or gratify the sexual desire of
27 any person in violation of Title 18, United States Code 2244
28 (a); and in violation of Title 18, United States Code 2246
(3); and that the offenses occurred in Indian Country, to wit
the Navajo Indian Reservation, in violation of Title 18,
United States Code 1153.

29 30) Based on the above, your affiant submits that
probable cause exists to believe Bruce Hamilton, committed
the following offenses: Aggravated sexual abuse, that is he
sexually assaulted JD1, an Indian person, on March or April
2011, by contact between the mouth and the penis, the mouth

1 and the vulva, or the mouth and the anus; and the intentional
2 touching, either directly or through the clothing, of the
3 genitalia, anus, groin, breast, inner thigh, or buttocks of
4 any person with an intent to abuse, humiliate, harass,
5 degrade, or arouse or gratify the sexual desire of any person
6 in violation of Title 18, United States Code 2241 (c); and in
7 violation of Title 18, United States Code 2244 (a); and in
8 violation of Title 18, United States Code 2246 (2)(B)(3); and
9 that the offenses occurred in Indian Country, to wit the
10 Navajo Indian Reservation, in violation of Title 18, United
11 States Code 1152.

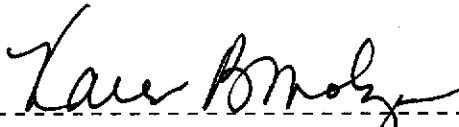
12 31) Based on the above, your affiant submits that
13 probable cause exists to believe Rosabelle Ben, an Indian
14 person, committed the following offenses: Aggravated sexual
15 abuse, that is she sexually assaulted JD1, an Indian person,
16 on various dates in 2011, by whoever commits an offense
17 against the United States or aids, abets, counsels, commands,
18 induces, or procures its commission, is punishable as a
19 principal, by contact between the mouth and the penis, the
20 mouth and the vulva, or the mouth and the anus; and the
21 intentional touching, either directly or through the
22 clothing, of the genitalia, anus, groin, breast, inner thigh,
23 or buttocks of any person with an intent to abuse, humiliate,
24 harass, degrade, or arouse or gratify the sexual desire of
25 any person in violation of Title 18, United States Code 2;
26 and in violation Title 18, United States Code 2241(c); and in
27 violation of Title 18, United States Code 2244 (a); and in
28 violation of Title 18, United States Code 2246 (2)(B)(3); and
that the offenses occurred in Indian Country, to wit the
Navajo Indian Reservation, in violation of Title 18, United
States Code 1153.

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Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me on
this 30th day of April, 2012



United States Magistrate Judge